

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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EQUINOX TRIBECA, INC.,

Plaintiff,

-against-

50 MURRAY STREET ACQUISITION LLC, as
successor in interest to LIONSHEAD 110
DEVELOPMENT, LLC,

Defendant.
-----X

Index No.:

Date of Purchase:

SUMMONS

Plaintiff designates New York
County as the place of trial.
The basis of venue is
Plaintiff's principal place of
business.

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
February 10, 2016

**LAROCCA HORNIK ROSEN
GREENBERG & BLAHA LLP**

By: 

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To: 50 Murray Street Acquisition LLC
c/o New York Secretary of State

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COMPLAINT

Plaintiff Equinox Tribeca, Inc. (“Equinox”), complaining of the defendant 50 Murray Street Acquisition LLC (“Murray Street Acquisition”), as successor in interest to Lionshead 110 Development, LLC, by its attorneys, LaRocca Hornik Rosen Greenberg & Blaha LLP, respectfully alleges:

FACTUAL BACKGROUND

1. Equinox is a New York corporation.
2. Murray Street Acquisition is a Delaware limited liability company authorized to conduct business in the State of New York.
3. On or about September 20, 2002, Equinox, as tenant, and Lionshead 110 Development LLC (“Lionshead”), as owner/landlord, entered into a written commercial lease (the “Lease”) that authorized Equinox to construct and operate the Equinox Tribeca Club in a portion of the first floor and mezzanine/second floor of a mixed-use building located at 110-120 Church Street, New York, New York (the “50 Murray Street Building”).
4. The Murray Street Building has 21 stories, with the ground floor consisting of various retail establishments, and the third to twenty-first floors consisting of approximately 389

residential units.

5. The Lease provides for an initial term of 15 years and also grants Equinox an option to extend the term of the Lease for two additional five year periods, each at fixed “Extension Rents.”

6. Each extension is exercisable at Equinox’s sole option, provided that an Event of Default does not exist as of the date that Equinox is to provide the required renewal exercise notice.

7. In consideration for Equinox’s payment of more than \$1.2 million in annual rent and other rent-related charges, the Lease grants to Equinox the express right to operate a center for health, fitness, spa, and sports purposes and activities related thereto, including squash and racquetball, “comparable to other first-class centers for health, fitness, spa and sports operated in Manhattan’s business districts and consistent with the core services provided by Equinox health clubs in New York City.”

8. Contemporaneously with the execution of the Lease, Lionshead, as owner/landlord, and Equinox Tribeca Office, Inc. (an Equinox affiliate), as tenant, also entered into a written commercial lease for approximately 6,000 rentable square feet located on the second floor of the 50 Murray Street Building for use as offices (the “Office Lease”).

9. Under the terms of the Office Lease, the tenant was granted the right to assign the Office Lease to Equinox without the landlord’s consent.

10. In the event of such an assignment, Equinox was expressly permitted under the Office Lease to expand its fitness center operations to the additional office space.

11. Pursuant to the terms of the Office Lease, on or about February 27, 2007, Equinox Tribeca Office, Inc. assigned the Office Lease to Equinox.

12. In accordance with the terms of the Lease, and with the Landlord's consent to the plans and specifications, Equinox converted the office space for use as an expanded area for its health and fitness operations.

13. Upon information and belief, 50 Murray Street Acquisition LLC ("Murray Street Acquisition") purchased the 50 Murray Street Building and took an assignment of the Lease in or about December 2014.

14. The Equinox Tribeca Club is one of 79 full service, luxury fitness centers owned and operated by Equinox throughout the United States, Toronto, and London.

15. Equinox attracts its customer base by providing a unique customer experience to its club members.

16. Each Equinox fitness club has a consistent design, which also incorporates the cultural feel of its surrounding neighborhood.

17. The Equinox Tribeca Club was designed with a wealth of windows, an expansive workout floor, and beautiful fitness studios, which were intended to reflect the high energy and fast pace of the surrounding financial community.

18. It was designed and built in the wake of the September 11th attacks—a risky time for a real estate investment in downtown Manhattan—based on Equinox's then belief that the Tribeca neighborhood and the surrounding financial district would rebound and thrive again, which hindsight has proven to be the case.

19. Over the past 14 years, thousands of club members have enjoyed the Equinox Tribeca Club, using its cardio and strength equipment and taking various classes in its yoga, spin cycle, and group fitness studios.

20. Among these members have been hundreds of the residents who live in the 50

Murray Street Building for whom the Equinox Tribeca Club has been a major draw.

21. The 50 Murray Street website (www.50murray.com) specifically advertises to prospective tenants that the building features the Tribeca Equinox Club and The Spa at Equinox.

22. Lionshead was aware of the enhancement in the value of its building by having the Equinox Tribeca Club located within it, and, accordingly, specifically negotiated a provision of the Lease whereby Equinox was (and is still) required to provide special discounted rates for all building residents, including a waiver of all initiation fees on memberships and also a 40% reduction off the annual membership fees traditionally charged for these types of memberships.

23. Despite 14 years of the Equinox Tribeca Club operating as a health club at the premises without its prior landlord ever having defaulted Equinox under the Lease, Murray Street Acquisition, the new owner of the building, served Equinox with a purported Notice of Default seeking to terminate Equinox's lease on the specious grounds that the very same noise and vibrations that have been associated with normal exercise at the health club for the last 14 years suddenly rise to the level of "defaults" under the Lease.

24. There have been no prior Notices of Default served upon Equinox by its prior landlord in 14 years of operations.

25. The Notice of Default is without merit and has no validity.

26. In its Notice of Default, Murray Street Acquisition alleged violations of the Lease based on purported noise or vibrations being created by the Equinox Tribeca Club and demanded that those violations be cured on or before February 16, 2016.

27. Murray Street Acquisition's demand in the Notice of Default that Equinox cure the alleged defaults by February 16, 2016 is without basis as no default existed at the time the cure was demanded.

28. The Notice of Default states that Murray Street Acquisition will serve a notice of intent to terminate the Lease if the alleged default is not cured by February 16, 2016.

29. A termination or attempt to terminate the Lease, or commencement of proceedings to remove or attempt to remove Equinox from the premises, and/or interference with Equinox's Lease, by Murray Street Acquisition based upon the deficient and defective Notice of Default would violate the Lease and would cause Equinox to suffer immediate and irreparable injury.

30. Equinox faithfully observed and performed all of its obligations under the Lease in designing and constructing a first-class fitness center approximately 15 years ago.

31. Approximately \$8 million was invested into the design and construction of the Equinox Tribeca Club, a substantial sum that has also dramatically enhanced the value of the landlord's building.

32. Equinox retained architects, engineers, and other highly skilled professionals to ensure that its construction build-out of the health club complied with the Lease requirements for doing so.

33. Equinox's previous landlord approved every aspect of the design and construction of the club.

34. Equinox's health club operations for the ensuing 14 years since the construction of the Equinox Tribeca Club have been entirely consistent with, and do not in any way violate, its permitted "Use" of the premises under the Lease.

35. The Lease expressly acknowledges that "noises customary for a health, fitness, spa and sports [center]" may emanate from the club.

36. The Lease prohibits Equinox only from creating "excessive noise (other than

normal noise for a center for health, fitness, spa and sports purposes).”

37. There is no allegation in the Notice of Default that Equinox is conducting (or has ever conducted) any health, fitness, spa, or sports activities other than those permitted under the Lease.

38. The activities and operations at Equinox are customary and normal for a first-class health club and, in fact, are no different from the health club activities and operations found in other first-class health clubs operated in Manhattan’s business districts and in other Equinox clubs.

39. Any noise or vibrations emanating from Equinox as a result of weight training, use of cardio equipment, cycling and group fitness classes, music playing, or any of its other fitness club activities or operations is “customary” and “normal” for a fitness center.

40. Because any noise or vibrations from Equinox’s permitted fitness operations is “customary” and “normal” for a fitness center, it is permitted under the Lease and, therefore, Equinox cannot be found in violation of the Lease as alleged in the Notice of Default.

41. Consistent with its desire of having and maintaining a first-class, state-of-the-art fitness center, Equinox has over the years proactively taken steps that have had the effect of minimizing and reducing noise and vibrations.

42. Equinox recently upgraded and installed thicker flooring in its strength training area, even though it was not obligated to do so under the Lease.

43. The Equinox Tribeca Club operated for more than 14 years—in the same manner that it is operating today—without Equinox’s prior Landlord ever issuing a Notice of Default or attempting to terminate the Lease.

44. If Murray Street Acquisition deems any noise or vibrations from the normal or

customary operations of Equinox to be unacceptable for its own purposes, Equinox is not contractually obligated to “cure” any such conditions.

45. Equinox is willing and able to cure an alleged default, if this Court should determine and adjudicate that any such default exists as described in the Notice of Default.

46. Equinox has no adequate remedy at law to address the Notice of Default.

47. Equinox is entitled to declaratory judgment, judgment tolling the cure period, permanent injunction, and damages based upon Murray Street Acquisition’s unlawful and unfounded service of the Notice of Default.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

48. Paragraphs 1 through 47 are realleged.

49. Equinox was not in default of the Lease at the time the Notice of Default was served.

50. Equinox is not conducting any health, fitness, spa, or sports activities other than those permitted under the Lease.

51. Any noise or vibrations emanating from Equinox is “customary” and “normal” for a fitness center and no different from the health club activities and operations found in other first-class health clubs operated in Manhattan’s business districts and in other Equinox clubs.

52. The Lease expressly acknowledges and permits noise or vibration that is “customary” and “normal” for a fitness center.

53. Because any noise or vibrations being complained of now by Murray Street Acquisition is “customary” and “normal” for a fitness center, it is expressly permitted under the Lease and, therefore, Equinox cannot be found in violation of the Lease as alleged in the Notice

of Default.

54. If Murray Street Acquisition deems any noise or vibrations from the normal operations of Equinox to be unacceptable for its own purposes, Murray Street Acquisition, and not Equinox, is obligated to take steps to modify the building's structural elements, such as the floor slab, subject to the Lease terms, or to soundproof other areas of the building that may be adversely impacted by noise and/or vibrations.

55. Murray Street Acquisition is responsible for maintaining, repairing, and improving the structural elements of its building under the Lease.

56. The defaults alleged by Murray Street Acquisition do not constitute a violation of the Lease and there is no lawful basis for the defendant to serve a written notice of intent to terminate the Lease upon Equinox.

57. Equinox has demonstrated that it is prepared and maintains the ability to cure the alleged default by any means short of vacating the Premises.

58. A basis exists for believing that Equinox has the ability to cure through any means short of vacating the Premises.

59. A bona fide justiciable and substantial controversy exists with respect to the parties' rights, obligations, and remedies under the Lease.

60. A declaratory judgment will serve to settle and clarify the parties' legal issues and will finalize the controversy and offer relief from uncertainty.

61. By reason of the foregoing, Equinox is entitled to judgment declaring that (i) Equinox is not in default under the Lease, (ii) any noise or vibrations emanating from the Equinox Murray Street Club is "customary" and "normal" for a fitness center and is expressly permitted under the Lease, and (iii) to the extent that Murray Street Acquisition deems any such

“customary” and “normal” noise or vibrations to be unacceptable for its own purposes, Murray Street Acquisition is obligated at its sole cost and expense to repair, modify, and/or improve the building’s structural elements or to take any other measures necessary to soundproof other areas of the building that it deems to be adversely affected by noise or vibrations.

AS AND FOR A SECOND CAUSE OF ACTION
(Permanent Injunction)

62. Paragraphs 1 through 61 are realleged.

63. The Notice of Default states that Murray Street Acquisition will serve a notice of intent to terminate the Lease if the alleged defaults are not cured by February 16, 2016.

64. Equinox will sustain irreparable harm in the event Murray Street Acquisition were to seek to terminate the Lease and to commence any action or proceeding to terminate the Lease or to remove Equinox from possession of the its premises or to interfere with Equinox’s use of the premises by means of “self-help.”

65. By reason of the foregoing, Equinox is entitled to judgment (i) permanently enjoining Murray Street Acquisition from seeking to terminate the Lease of Equinox for the violations alleged in the Notice of Default; (ii) permanently enjoining Murray Street Acquisition from seeking to terminate Equinox’s Lease and from commencing any action or proceeding to terminate the Lease or remove Equinox from possession of its premises, or interfering with Equinox’s possession or use of its premises, based upon the defaults alleged in the said Notice of Default; and (iii) granting it damages based on Murray Street Acquisition’s unlawful and unfounded service of the Notice of Default.

AS AND FOR A THIRD CAUSE OF ACTION
(Judgment Tolling the Cure Period)

66. Paragraphs 1 through 65 are realleged.

67. Equinox is willing and able to cure any alleged default if this Court should determine and adjudicate that any such default exists as described in the Notice of Default.

68. In the event the Court should determine that the defaults alleged in the Notice of Default constitute violations of the terms, covenants and conditions of said Lease or defaults in its obligations, Equinox is entitled to judgment tolling the period in which it may cure said violations or defaults.

AS AND FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

69. Paragraphs 1 through 68 are realleged.

70. By reason of service of the Notice of Default and its related acts, Murray Street Acquisition has breached the Lease, including, but not limited to, the covenant of quiet enjoyment inuring to Equinox by reason of the Lease.

71. In addition, Murray Street Acquisition has breached the covenant of good faith and fair dealing inherent in its obligations under the Lease.

72. Equinox is entitled to an award of damages against Murray Street Acquisition in an amount not less than Eight Million (\$8,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against defendant:

(1) On the First Cause of Action, declaring that (i) Equinox is not in default under the Lease, (ii) any noise or vibrations emanating from the Equinox Murray Street Club is “customary” and “normal” for a fitness center and is expressly permitted under the Lease, and (iii) to the extent that Murray Street Acquisition deems any such “customary” and “normal”

vibrations to be unacceptable for its own purposes, Murray Street Acquisition is obligated at its sole cost and expense to repair, modify, or improve the building's structural elements or to take any other measures necessary to soundproof other areas of the building that it deems to be adversely affected by noise or vibrations.

(2) On the Second Cause of Action, permanently enjoining defendant or anyone acting on its behalf from seeking to terminate the Lease for the defaults alleged in the Notice of Default and permanently enjoining the defendant from seeking to terminate the Lease and from commencing any action or proceeding to terminate the Lease or remove plaintiff from possession of said premises, or interfering with plaintiff's possession of said premises based upon the defaults alleged in the Notice of Default;

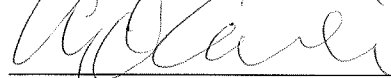
(3) On the Third Cause of Action, if it is determined that Equinox is in default, judgment tolling the period in which plaintiff may cure the default for a commercially reasonable time to be set by the Court;

(4) On the Fourth Cause of Action, awarding damages in the amount not less than Eight Million (\$8,000,000) Dollars; and

(5) Granting such other and further relief as the Court may deem just and equitable; all together with the costs and disbursements of this action.

Dated: New York, New York
February 10, 2016

**LAROCCA HORNIK ROSEN
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